

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

UNITED STATES OF AMERICA)
) 1:01-CR-145
v.) Chief Judge Curtis L. Collier
)
TERRANCE LOWDERMILK)
)

ORDER

Defendant Terrance Lowdermilk filed three *pro se* motions for return of certain property. (Court Files No. 45, 46, 47). On November 16, 2006, the Court entered a Judgment Order granting the United States's motion for reconsideration of the Court's Order granting Defendant's motion for return of property. (Court File No. 42). In the Memorandum accompanying the Judgement Order, the Court explained it denied Defendant's motion in reliance on evidence which clearly showed that the government was not, and had never been, in possession of Defendant's property. (Court File No. 41). This same evidence showed that Defendant's property was seized by the Hamilton County Sheriff's Department pursuant to Tennessee law.

Under Fed. R. Crim. P. 41(g), "a person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return . . ." A motion pursuant to Rule 41(g) is treated as a civil action in equity when, as here, the owner of the property invokes the Rule after the conclusion of his criminal proceedings. *United States v. Dusenberry*, 201 F.3d 763, 768 (6th Cir. 2000). However, where the government does not possess the property, it cannot return the property and a Rule 41 motion must be denied. *United States v. White*, 718 F.2d 260, 261 (8th Cir. 1983). Accordingly, the Court denied Defendant's original motion for return of property on November 16, 2006. (Court File No. 42). If Defendant wishes to challenge the forfeiture, he must do so in Tennessee state court because the property was seized and forfeited by

state authorities under state law.

For the forgoing reasons, the Court **DENIES** Defendant's motions for return of certain property. (Court Files No. 45,46,47).

SO ORDERED.

ENTER:

/s/

CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE